

Update: Traffic Benchbook— Revised Edition, Volume 2

Part I—Vehicle Code §625 and §904

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.2 Police Authority to Arrest Without a Warrant

E. Defendant Rights at Arrest

2. Sixth Amendment Right to Counsel

Insert the following language at the end of the information contained in subsection 2 on page 2–9:

A defendant's Sixth Amendment right to counsel includes the defendant's right to retain the counsel of his or her choice, even when the defendant's primary counsel wishes to join co-counsel from outside the state on a *pro hac vice* basis. *People v Fett*, ___ Mich App ___, ___ (2003). In *Fett*, the defendant was charged with OUIL or UBAL. Because the defendant had two prior alcohol-related convictions within the past ten years, conviction of either of the charges or the lesser-included offense of OWI would result in a felony conviction. ___ Mich App at ___.

Commenting that “[i]t is a simple OUIL case, and I am sure [defendant's Michigan counsel] has tried many cases on OUIL,” the trial court denied the defendant's timely request to admit *pro hac vice* an attorney licensed in Ohio to assist the defendant's Michigan attorney at trial. ___ Mich App at ___. The Michigan Court of Appeals reversed the trial court's ruling and held that “a trial court may not arbitrarily and unreasonably refuse to grant admission *pro hac vice* of an otherwise qualified out-of-jurisdiction attorney.” ___ Mich App at ___. The Court further held that the trial court's denial of the defendant's request was a structural and constitutional error mandating automatic reversal. ___ Mich App at ___.

Part II—Felony Traffic Offenses

CHAPTER 7

Felony Offenses in the Michigan Vehicle Code

7.4 Failing to Stop at Signal of Police Officer (“Fleeing and Eluding”)

Insert the following case summary on page 7–11 at the end of subsection “E. Issues”:

Fleeing and eluding is not a specific-intent crime; therefore, a defendant cannot raise intoxication as a defense to a charge of fleeing and eluding. *People v Abramski*, ___ Mich App ___, ___ (2003). In *Abramski*, the defendant was convicted by jury of four charges, including fleeing and eluding and operating a motor vehicle while under the influence. The defendant argued that the statutory language prohibiting the conduct of fleeing and eluding expressly requires that a driver *willfully* fail to obey a police officer’s direction. According to the defendant, the inclusion of the word “willfully” in the statutory language indicated that more than general intent was required to constitute a violation. The Court of Appeals disagreed and reasoned that “‘where the knowledge element of an offense is necessary simply to prevent innocent acts from constituting crimes,’” the “knowledge” or “willful” element of the statute is only a general intent requirement. ___ Mich App at ___, quoting *People v Karst*, 138 Mich App 413, 416 (1984).

Having concluded that the fleeing and eluding statute does not require that an individual intend that his or her conduct cause or result in a specific consequence beyond fleeing and eluding, the defendant could not raise intoxication as a defense. “[V]oluntary intoxication is not a defense to a general intent crime.” ___ Mich App at ___.